



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

August 4, 1981

OFFICE OF GENERAL COUNSEL

B-95136

Mr. William O. Nolen, Investigator  
Subcommittee on Investigations and Review  
Committee on Public Works - House of Representatives  
B-376 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Nolen:

You asked whether any provisions in the lease between Town Center Management Company, Inc. and GSA for leased space in Waterside Mall would have justified the withholding of rent for the [landlord's failure to provide a cafeteria for Federal workers], as required by the lease.

In response to our recommendation in our September 20, 1977 report "No Cafeteria for Federal Employees at Waterside Mall," LCD-77-349, that rent be withheld pending resolution of the issue by the GSA Board of Contract Appeals, GSA's Office of General Counsel asserted that no lease clause permitted such withholding. As you know, the GSA Board determined on March 31, 1980, that GSA had waived its entitlement to a cafeteria because, among other things, it never made good on its threat to withhold rent for the landlord's failure to provide the cafeteria.

At the time our recommendation was drafted, our motivation, frankly, was to generate some movement on a long-stalled issue. In other words, even if withholding rent for the landlord's failure to provide a cafeteria would have resulted in a technical breach of the lease requirement to pay rent in full for the space leased (because no lease clause clearly provided for such withholding), it would have been warranted by the landlord's corresponding breach of his duty to provide the cafeteria. We felt that the withholding of rent would have prompted the landlord to litigate the question promptly, instead of continuing his inconclusive negotiations with GSA on the question, which had been pending for several years. As it turned out, it was GSA's lack of more aggressive action which resulted in the GSA Board's determination that the lease requirement had been waived.

In our recent discussions on this issue, we speculated that either paragraph 15 of the lease's general provisions, "Failure of Performance," or paragraph 7 of the miscellaneous provisions, "Termination for Default - Liquidated Damages - Time Extensions," might have authorized the withholding of rent. On further reflection, however, it appears that neither of these clauses would have clearly allowed rent to be withheld.

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Although paragraph 15 deals with the landlord's failure to provide required services, which would seem to cover the cafeteria, it allows rent deductions only for the Government's cost in securing the missing services. Thus, while this provision would have supported the part of our recommendation that suggested GSA provide the cafeteria and deduct its cost from rent payments, it would not have allowed deductions from the lease's inception for the failure to provide a cafeteria.

Paragraph 7, on the other hand, seems clearly to relate to the landlord's failure to provide portions of the leased space on time. As you know, the cafeteria was to be provided at the landlord's expense in the landlord's space rather than as part of the leased premises, all of which was to be used for non-cafeteria purposes.

Please let me know if you need any further information.

Sincerely yours,



Robert H. Hunter, Jr.  
Assistant General Counsel